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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1486

UNITED STATES OF AMERICA,
Petitioner,

v.

CALMAN BERNSTEIN,
Respondent.

On PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR CALMAN BERNSTEIN, RESPONDENT, IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals is reported at 509 F.2d 996. The opinions of the district court are reported at 363 F. Supp. 438 and 368 F. Supp. 757 (Pet. App. A, D and E).

JURISDICTION

The judgment of the court of appeals was entered on January 24, 1975 (Pet. App. B). A petition for rehearing was denied on March 28, 1975 (Pet. App. C). The Chief Justice, on April 24, 1975, extended the time for the filing of a petition for a writ of certiorari to and including May 27, 1975. A petition for writ of certiorari was filed on May 27, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a person is "known", within the meaning of 18 U.S.C. 2518(1)(b)(iv) and 2518(4)(a), and therefore required to be named in an application and order for wire interception, when the law enforcement authorities have probable cause to believe that the person is committing the offense and using the telephone line for which the wire interception is sought.

2. Whether the district judge properly suppressed, as to the Respondent, evidence derived from a court-authorized wire interception, where the Respondent, although known to the Government to be a participant in the activity being investigated, and although known to be a user of the intercepted telephone line, had been named in neither the application nor order for the interception, as required by 18 U.S.C. 2518(1)(b)(iv) and 2518(4)(a), and where such omission was the result of conduct which the district judge found as a fact to be "tantamount" to a demonstration of "conscious disregard for the dictates" of the federal eavesdropping statute.

STATEMENT

The indictment in this case alleged, in one count, that the Respondent, Calman Bernstein, in association with

Robert S. Curreri and ten others, conducted an illegal gambling business, in the period from February to June, 1972, in violation of 18 U.S.C. 1955 (Jt. App. 12-13).[1] The theory of the prosecution was that the gambling enterprise was headed by Curreri; that its principal location was at the premises of the Ocean Pride Seafood Company, a Curreri venture, in Baltimore; that Respondent, Calman Bernstein, was a key confederate who performed the function of layoff man; and that various others, in lesser positions, assisted in the conduct of the illicit gambling business (Jt. App. 21-35, 50-66, 425-37).

The Government's evidence consisted principally of recordings of intercepted telephone conversations. The recordings had been obtained through a series of eavesdropping orders, each for a period of fifteen days, entered on March 30, April 14, May 1 and May 17, 1972 (Jt. App. 39-43, 69-72, 114-17, 141-44). The March 30 and April 14 orders authorized the interception of conversations upon three telephone lines at the Ocean Pride premises (Jt. App. 39-43, 69-72). The March 30 order also authorized interception of conversations upon a telephone line at a private apartment, used as an office in the Curreri operation, and the May 1 and 17 orders similarly authorized surveillance at private apartments (Jt. App. 114-17, 141-44).

The Respondent, Bernstein, moved timely for suppression of the evidence of his conversations during the period of the second eavesdropping, the surveillance under the order of April 14, 1972 (Jt. App. 154-75). The motion alleged that the Respondent, Bernstein, had been a target of the investigation from its inception;

[1] References are to the joint appendix in the court of appeals.

that, through informants and other investigative information, the Government, prior to any eavesdropping, had determined that he was implicated in the Curreri operation; that, through telephone calls intercepted on April 11 and 12, 1972, prior to the second application, he was known to be a user of the Ocean Pride telephone lines being surveilled; and that, pursuant to the provisions of the federal eavesdropping statute he should have been named in the application and order of April 14th (Jt. App. 155-57).

At a hearing on May 11, 1973, the Government resisted an evidentiary exploration. The prosecutor represented to the district judge that, prior to the April 14th order, the Respondent, Bernstein, was "not in any way connected with the operation" and that he was "not shown by any of our investigation to have any connection with Mr. Curreri" (Jt. App. 204).

In view of the conflicting proffers, the district judge ordered an evidentiary hearing, and in an opinion, filed on June 11, 1973, he set the standards which Bernstein would have to meet to be successful in his motion. "Before there is a need for a wiretap order to specifically list a person whose conversations are to be intercepted", the judge ruled, "the government must, at the time the order is applied for, have probable cause to be believe that person is involved in the criminal activity the wiretap seeks to monitor and is a user of the communication facility for that illegal purpose (Pet. App. D, pp. 27a-28a). T e defendant's burden, he added, was substantial. ". . . (T) he court believes a strong and clear, and not questionable, showing of probable cause existing at the time of the application is needed to sustain a motion to suppress after the wiretap has concluded, such a showing being tantamount to demonstrating a conscious disregard for the dictates of Title III" (Pet. App. D, p. 29a).

At the evidentiary hearing, held on August 9, 1973, testimony was taken from Special Agent Thomas Kelly, the man in charge of the investigation, and from the F.B.I. agents who assisted him. Documentary data was also received (Jt. App. 384-456). The evidence, in sum, substantiated the Respondent's allegations and contradicted the representations which had been made by the Government at the earlier hearing on May 11, 1973. It was shown that the Respondent, Bernstein, had been under investigation for alleged gambling activity for almost a year prior to the eavesdropping and that he had been named by at least two reliable informants as Curreri's associate (Jt. App. 314-44, 424-27, 431-32, 441). It was also proven that the agents and the prosecutor, prior to the inception of the eavesdropping, had credited the informant information and had determined that an eavesdropping upon Curreri's telephone lines was likely to intercept conversations of Bernstein (Jt. App. 346-48, 352-53, 421-23, 428-40). It was also demonstrated that Bernstein was in fact overheard during the first surveillance engaging in conversation related to the gambling business; that the agents recognized him; and that they took special note of the fact that, as they had earlier anticipated, he was a user of the lines being tapped (Jt. App. 272-81, 332-36, 357-82, 397-414).

Of particular significance was the evidence relating to the events surrounding the initiation of the interception. It was shown that on March 1, 1972, when Special Agent Kelly, together with the prosecutor in this case, drafted the first affidavit in support of the initial application, they named the Respondent, Bernstein, and linked him with Curreri (Jt. App. 352-55, 428-40). A copy of this draft, received in evidence, demonstrated that, on January 18, 1972, a confidential informant had advised the F.B.I. that, as of that date, "Robert Curreri

was operating a large numbers gambling business and giving his lay-off to Cal Bernstein". The draft went on to recite the proven reliability of the informant and it stated that he had acquired his information "through personal conversation with key individuals involved in the operation" (Jt. App. 431-32). Other information with respect to Bernstein, which corroborated the informant, was also described (Jt. App. 431-32). The draft concluded that Curreri and Bernstein were then engaged together in an illegal gambling business; that the telephones at Ocean Pride Seafood, among others, were being used to carry out the illegal business; and that evidence against them might be obtained through interception of wire communications (Jt. App. 428-29; Ct. Ex. 5). In his testimony at the evidentiary hearing, Agent Kelly added that this determination had been based, in part, upon his special expertise in gambling cases (Jt. App. 347-48).

It was also shown that on March 3, 1972, the proposed affidavit was submitted to the F.B.I. office in Washington, D.C. for review (Jt. App. 42), and that, four days later, on March 7th, the Washington office responded by teletype, advising that, "A review of your affidavit indicates that the subjects are engaged in a gambling operation which appears to warrant Title III electronic surveillance coverage" (Jt. App. 421; Ct. Ex. 1). The teletype requested, however, "certain additions", and, most pertinent to this case, said that, "To corroborate information provided by informants, you should attempt to develop additional current information regarding . . . Calman Bernstein" (Jt. App. 421; Ct. Ex. 1).

It was also proven that, on the next day, March 8, 1972, in response to the teletype, another confidential informant was interviewed (Jt. App. 426-27; Ct. Ex. 4).

This informant told the F.B.I. that Curreri was then "active in the numbers field" and that he was "laying off to Cal Bernstein" (Jt. App. 427; Ct. Ex. 4). It was noted on the report of this interview that the information was reliable (Jt. App. 426; Ct. Ex. 4). Special Agent Kelly was advised immediately of this most recent information, and in his testimony at the hearing he confirmed that this informant too was reliable (Jt. App. 324, 426).

The record demonstrated that, notwithstanding the current information obtained on March 8th, it was decided that all reference to Bernstein in the application, affidavit and order would be deleted. The application which was presented to the authorizing judge by Special Agent Kelly and the prosecutor on March 30, 1972, named only Curreri and four minor figures (Jt. App. 14-18). The order, signed by the judge on that same date, was similarly framed (Jt. App. 39-43).

Other significant evidence, relating to conversations intercepted during the initial eavesdropping, was also produced. It was shown that on April 11, 1972, during the period of the first authorization, the agents monitored an important call from Bernstein to Curreri. The conversation dealt almost entirely with procedures to be employed in paying winning numbers bettors and with steps to avoid pay offs on wrong numbers (Jt. App. 272-78, 393-406). Bernstein and Curreri both said that they would have further business discussions by telephone, and the monitoring agents made special note of this fact.[2] In another conversation, overheard on

[2] It was noted in the log that, "Bob [Curreri] tells Cal [Bernstein] to give this number to your girl and have her call me", and, "Cal says if I find out I will call you there at home or at your mother's" (Jt. App. 398; DX 3a). Bernstein was quoted as instructing Curreri to "tell your girl . . . this

April 12, 1972, it was learned that third persons would attempt to contact Bernstein through Curreri; that Curreri was in possession of Bernstein's private telephone number; and that this private number was for Curreri's use alone (Jt. App. 407-11; DX 4a, 4b).

The record also showed that on April 14, 1972, when the first authorization was about to expire, Special Agent Kelly and the prosecutor presented their application and affidavit for the second eavesdropping. In spite of the accumulation of knowledge about Bernstein, including the intercepted calls of April 11th and 12th, and notwithstanding the clear expectation that Bernstein would make further use of the monitored lines, the second application did not name him and he was nowhere mentioned in the supporting affidavit (Jt. App. 44-68). As a consequence, Bernstein was not identified in the order of April 14th as a person whose conversations would be intercepted (Jt. App. 69-72). Throughout the period of the second order, however, the agents intercepted conversations in which Bernstein participated. The recordings and transcripts of these calls, eight in number, were the subject of the motion to suppress (Jt. App. 154-57, 199).

On December 11, 1973, the district judge filed his second opinion and entered an order suppressing, as against the Respondent, Bernstein, the evidence relating to Bernstein's calls during the period of the second interception (Pet. App. E, pp. 32a-44a; Jt. App. 11, 457-66). The opinion set forth detailed findings of fact (Pet. App. E, pp. 37a-45a; Jt. App. 461-64). The district judge decided, on the basis of the facts determined, that

number here" (Jt. App. 404). Bernstein also advised Curreri that, upon securing certain information relevant to the gambling enterprise, I'll call" (Jt. App. 404, 405). The conversation ended with Bernstein saying, "I'll talk to you later" (Jt. App. 406).

Bernstein had met his burden of proof. The evidence had demonstrated such a "strong and clear . . . showing of probable cause", the district judge held, that the decision not to name Bernstein in the application and order had been "tantamount to demonstrating a conscious disregard for the dictates of Title III" (Pet. App. E, pp. 36a, 45a; Jt. App. 460-61). Since the Respondent, Bernstein, was known to the Government, the district judge concluded, and since his name was intentionally omitted from the application and order, the second eavesdropping, as to him, was unlawful, and he was entitled to suppression (Pet. App. E, p. 45a; Jt. App. 464).[3]

The Government entered an interlocutory appeal pursuant to 18 U.S.C. 3731. The court of appeals affirmed (Pet. App. B, p. 19a).[4] The findings of the district judge were accepted as having been supported by the record (Pet. App. A, pp. 13a-15a). Applying the standard enunciated in *United States v. Kahn*, 415 U.S. 143, 155, decided by this Court while the appeal in the present case was pending, the court of appeals held that a person is "known", and therefore required to be named in an eavesdropping application and order,

[3] A supplemental motion, filed after the evidentiary hearing, sought suppression of the evidence obtained during the period of the first eavesdropping, under the order of March 30, 1972 (Jt. App. 176-78). The supplemental motion was denied (Pet. App. E, p. 42a).

[4] The statute only permits interlocutory appeals by the Government. Since there was no final judgment against the Respondent, by virtue of the fact that the indictment against him remained open, the Respondent could not cross appeal from the district judge's ruling on the supplemental motion. *Di Bella v. United States*, 369 U.S. 121; *Art Theatre Guild, Inc. v. Parrish*, 503 F.2d 133 (6th Cir., 1974). The opinion of the court of appeals, while not directly concerned with the ruling on the supplemental motion, implied that it was correctly denied (Pet. App. p. 14a).

when the Government has probable cause to believe that he is committing the offense and may be overheard on the intercepted telephone lines (Pet. App. A, p. 13a).

The court of appeals also held that the identification requirements of 18 U.S.C. 2518(1)(b)(4) and (4)(a) are an integral part of the statutory scheme; that they must be followed to effectuate the underlying legislative policy; and that compliance with their command is a statutory precondition to lawful eavesdropping (Pet. App. A, pp. 3a-11a). Under the rule of *United States v. Giordano*, 416 U.S. 505, therefore, the court of appeals concluded, suppression was warranted (Pet. App. A, pp. 5a-11a).

ARGUMENT

1. The government contends that the decision of the court of appeals represents an unwarrantedly expansive reading of 18 U.S.C. 2518. The pertinent statutory language, about which this complaint is voiced, is that:

> "(1) Each application for an order authorizing or approving the interception of a wire or oral communication . . . shall include the following information:
>
> * * * * * *
>
> (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including . . . (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;
>
> * * * * * *
>
> (4) Each order authorizing or approving the interception or any wire or oral communication shall specify—
>
> (a) the identity of the person, if known, whose communications are to be intercepted;"

The Government argues that the statute should be read as if it required the identification of "only one" or a "single" person committing the offense (Pet. 8, 13). Engrafted onto the statute, the argument continues, should be the requirement that this one person be "the principal target" or "the primary target" of the investigation (Pet. 8, 9, 12, 15, 16).

The Government's reading of the identification requirement is wholly without reference to the context in which it appears. The Government gives no recognition to the fact that known participants are required to be identified as part of the statutory command that an eavesdropping application contain "a full and complete statement" of the facts and circumstances. (18 U.S.C. 2518(1)(b)). The Government's suggestion, contrary to the statutory mandate, is that a perfunctory and incomplete effort at identification, so long as it names a single person, should be deemed acceptable. It is contrary to the manifest legislative purpose that the requirement of "a full and complete statement" is a "command of particularization". (S. Rpt. No. 1097, 90th Cong., 2d Sess. (1968), 2 U.S. Cong. & Adm. News (1968), 2190).

The identification provisions, moreover, operate in conjunction with other statutory provisions which, by their express terms, contemplate the identification of more than one person in the application and order. Section 2518(1)(e), for example, requires that the application contain a "full and complete statement" concerning "all previous applications" for interceptions "involving *any of the same persons* . . . specified in the application" (Emphasis supplied). Section 2518(8)(d) makes it mandatory for the judge to issue notice and an

inventory upon the termination of the eavesdropping, "on *the persons named* in the order or the application" (Emphasis supplied).

The essence of the Government's argument, that this Court adopt a "principal target" formulation for satisfaction of the identification requirement, is divorced from reality. It proceeds from the mistaken premise that a criminal investigation can be expected to have but one principal target. The eavesdropping statute, however, is aimed at a group of offenses in which there are usually multiple subjects. The statute authorizes electronic eavesdropping, for example, for obtaining evidence of "any conspiracy" to commit a variety of federal or state crimes. (18 U.S.C. 2516(1)(g), (2)). In such cases there must, of necessity, be more than one principal target. The present case, moreover, is typical. As the record below demonstrates, there were several persons who were the subjects of the investigation in this case, and one of them, from the inception, was the Respondent, Bernstein (Jt. App. 425-41).

The court of appeals, in requiring the identification of those persons for whom there was probable cause to justify a belief of complicity, and who might be overheard in the eavesdropping, followed the teaching of this Court in *United States v. Kahn*, 415 U.S. 143, 155, where it was said that:

> "Title III requires the naming of a person in the application or interception order only when the law enforcement authorities have probable cause to believe that that individual is 'committing the offense' for which the wiretap is sought."

The clear import of the quoted statement is that a person must be named in the application and order whenever there is probable cause to believe that he is a participant in the offense and may be intercepted in the

course of the wiretap. Other federal courts have drawn this same lesson from *Kahn*. See, e.g., *United States v. Donovan*, 513 F.2d 337, 341 (6th Cir., 1975); *United States v. Moore*, 513 F.2d 485 (D.C. Cir., 1975); *United States v. Chiarizio*, 388 F. Supp. 858, 867-69 (D. Conn., 1975); *United States v. Brodson*, 390 F. Supp. 774, 783-84 (E.D. Wis., 1975).[5]

The Government complains that the statement in *Kahn* was only dictum; that it embodied an unfortunate and incorrect statutory construction; and that it should be corrected in the present case. The statement in *Kahn*, however, was not inadvertent. Indeed, in that case, the Government urged that the statute should be so construed. The Solicitor General, in his petition for certiorari in *Kahn*, asserted:

> "In wiretap situations there are generally three classes of persons involved: First, the person or persons against whom the investigation is directed and probable cause is shown . . .
>
> * * * * * *
>
> It is our position that only persons in the first group need be identified in the application and order . . ."
>
> (Petition for Certiorari, No. 72-1328, p. 8)

[5] The only expression of a contrary view was by a divided panel of the Fifth Circuit, over the strong dissent of Judge Thornberry, in *United States v. Doolittle*, 507 F.2d 1368 (1975). Judge Thornberry noted that the case had been briefed prior to this Court's decision in *Kahn* and that the panel had rendered its decision without adequate assistance from the parties. It does not appear that the panel in *Doolittle* was made aware of the decision of the Fourth Circuit in the present case. Although the decision in this case had been rendered three weeks earlier, it was not yet officially reported. The Fifth Circuit has since granted a rehearing *en banc*. The rehearing was held on June 3, 1975, and, as of this date, no decision has been rendered.

In his brief on the merits, moreover, the Solicitor General acknowledged that, "Manifestly, the identification requirement imposed by Congress relates to knowledge of probable criminal complicity . . ." (Brief for United States, No. 72-1328, p. 14). The Government itself, therefore, has not heretofore read the statute as being satisfied by the naming of a single person, and it has acknowledged, as this Court declared in *Kahn*, that "persons against whom the investigation is directed and probable cause is shown . . . need be identified in the application and order".

2. The Government contends that strict enforcement of the identification requirement does not "significantly further any substantial policy interest"; that the failure to identify known participants should be regarded as a clerical omission; and that, under the rule of *United States v. Chavez*, 416 U.S. 562, suppression is inappropriate (Pet. 7, 14, 18). Contrary to the Government's contention, the identification provision has a central role in the statutory scheme. Other important safeguards, particularly those relating to the disclosure of prior eavesdropping and the service of inventory notice, are dependent entirely upon compliance with the identification provision (18 U.S.C. 2518(1)(e) and (8)(d)). If the government were permitted to ignore the identification requirement, and to designate no more than one of the persons against whom an eavesdropping is directed, the other provisions, which are dependent upon identification for their operation, would become meaningless. The court of appeals, therefore, properly held that the identification requirement "directly and substantially" implements the Congressional design, and that the holding of *United States v. Giordano*, 416 U.S. 505, requires suppression for failure to comply with the identification requirement.

Congress was concerned with the potential for abuse of the wiretapping tool through successive and prolonged eavesdroppings. This same concern had been voiced by this Court, in the constitutional context, in *Berger v. New York*, 388 U.S. 41, 59-60. Accordingly, the eavesdropping statute limits the duration of a single eavesdropping to thirty days (18 U.S.C. 2518(5)). To prevent the circumvention of this limitation, through the use of multiple applications, which might be addressed to different judges, the statute requires the law enforcement authorities to detail the history of prior eavesdroppings upon the conversations of the same subjects. Section 2518(1)(e), as we noted earlier, requires that the application contain "a full and complete statement of the facts concerning all previous applications . . . made to any judge for authorization to intercept . . . wire or oral communications involving any of the same persons . . . specified in the application, and the action taken by the judge on each such application". The importance of this safeguard was underscored in *United States v. Bellosi*, 501 F.2d 833 (D.C. Cir., 1974). There, the application identified three persons as the subject of the eavesdropping, but it omitted the prior history of applications involving one of them. Since disclosure of prior applications is a statutory precondition designed to protect against prolonged and abusive use of wiretapping, it was held that failure to make the disclosure required suppression.

The Government's petition in the present case appears to acknowledge the correctness of the *Bellosi* holding (Pet. p. 16, n. 16). But the operation of Section 2518(1)(e) is dependent, by its own terms, upon the extent to which the government adheres to the identification requirement of Section 2518(1)(b)(4). If the Government were to be permitted to restrict its identification of

known participants, as it urges in this case, it would relieve itself, correspondingly, of much of its duty to disclose the history of prior eavesdroppings. In the *Bellosi* context, for example, if the Government had been permitted to refrain from naming one of the three subjects of the surveillance, it would have had no duty, under Section 2518(1)(e), to divulge its prior intrusions upon his conversations.

The operation of the provision with respect to notice and inventory is also dependent upon the adequacy of compliance with the identification provision. Section 2518(8)(d) makes it mandatory for notice to be served "on the persons named in the order or the application". To the extent that the government is permitted to avoid identifying the subjects of its eavesdropping, it may also avoid notifying them that they were the subjects of an intrusion. The inventory and notice requirement is designed to alert the community, through notification to those most directly affected, that eavesdropping has taken place. The Senate Report observed that, "This provision alone should insure the community that the techniques are reasonably employed" (S. Rpt. 1097, 90th Cong., 2d Sess. (1968), 2 U.S. Cong. & Adm. News (1968), 2190).

The petition for certiorari acknowledges that the decision below "will strongly encourage the naming in applications and interception orders of all persons who may eventually be overheard" (Pet. p. 13). This encouragement will insure the effective operation of those provisions which are dependent upon fulfillment of the identification requirement, and, as a consequence, it will further the aims of the statute. As the court of appeals also observed, it should not be assumed that either the Attorney General, who authorizes an interception, or the issuing judge, who grants the order,

would have no interest in knowing the extent to which the eavesdropping dragnet is expected to be employed (Pet. App. A, pp. 7a-9a).

Two other courts of appeal, in accord with *Bernstein*, have held that a person is "known" within the meaning of the statute when there is probable cause to believe that he is implicated in the offense and likely to be overheard over the intercepted line; that the identity of such a "known" individual must be brought to the attention of the judge ruling on the wiretap request; and that suppression of evidence is the appropriate remedy when the Government illegally fails to name such a "known" individual in the wiretap application. (See: *United States v. Donovan*, 513 F.2d 337 (6th Cir., 1975) and *United States v. Moore*, 513 F.2d 485 (D.C. Cir., 1975)). The Sixth Circuit, in *Donovan*, reached its result independently of this case at about the same time that the Fourth Circuit rendered its decision here. The District of Columbia Circuit, in *Moore*, found the decision of the court of appeals in this case "persuasive" and followed it. (513 F.2d 485, 494, 497, n. 34).

3. The Government claims that enforcement of the indentification requirement "creates serious practical difficulties for law enforcement" (Pet. p. 9). This is an inappropriate case for the consideration of such a complaint. As we discussed earlier, the circumstances in the present case were so compelling, and the failure to name Bernstein so inexplicable, as to require the district judge to conclude that the violation was "tantamount to demonstrating a conscious disregard for the dictates of Title III" (Pet. App. E, pp. 36a, 45a; Jt. App. 460-61). The petition for certiorari concedes that conscious disregard of the identification requirement justifies suppression (Pet., p. 13, n. 13). (Cf. *United*

States v. Eastman, 465 F.2d 1057 (3rd Cir., 1972)). In light of the findings of the district judge here, adequately supported by the record, the Government should have no quarrel with the imposition of the sanction in this case. The identification provisions were advertently denigrated in this case, and the courts below correctly refused to countenance the lawlessness.

Furthermore, the government's expressed fears have not been justified by experience. There has been no demonstrable administrative inconvenience in complying with the identification requirement. The recently decided cases show that the lower federal courts have experienced little difficulty in applying the standard. (See: *United States v. Chiarizio*, 388 F. Supp. 858 (D. Conn., 1975); *United States v. Brodson*, 390 F. Supp. 774 (E.D. Wis., 1975); *United States v. London*, . . . F. Supp. . . . (No. B75-099) (D. Md.), decided June 13, 1975 and not yet officially reported). A salutory rule should not be discarded on the basis of imagined, and unrealized, difficulties.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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